IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

CRL.A.No. 237 of 2003()

SC.59/2000 of SESSIONS COURT (AD HOC) FAST TRACK COURT-I, MANJERI

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APPELLANT:

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1. NHARKKAD ALIYAR @ ALI, S/O.HUSSAIN, KARAPACHANGOTTOOR, MUVATTUPUZHA.

2. KANANGATTU VALAPPIL SALVUDHEEN, S/O.MOIDUNNI, KEEZHAKKARA, OTHALUR, ,MALAPPURAM DISTRICT.

3. KANANGATTU VALAPPIL GAFOOR, S/O.MOIDUNNI, KEEZHAKKARA, OTHALUR, MALAPPURAM DISTRICT.

4. KANANGATTU VALAPPIL SHOUKATH, S/O.MOIDUNNI KEEZHAKKARA, OTHALUR, MALAPPURAM DISTRICT.

BY ADV. SRI.P. VIJAYA BHANU

RESPONDENTS:

STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.1289/2003 IN CRL.A.NO.237/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

17/10/2007

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K.R.UDAYABHANU, J.

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Crl.A.No.237 of 2003(A)

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Dated this the 17th day of October, 2007

J U D G M E N T

The appellants herein are accused Nos.1, 3, 4 and 5 in S.C.No.59/2000 in the file of the Addl.District and Sessions Judge (Ad hoc), Fast Track Court-I, Manjeri. Accused Nos.1, 3 and 4 stand convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of rupees one lakh each and in default to undergo simple imprisonment for two years each. The fifth accused was released on probation.

2. The prosecution case is that on 18/11/1997, at 8.30 a.m, the accused were found unloading Indian Made Foreign Liquor from lorry No.K.B.E 7498. 2048 bottles of I.M.F.L were seized altogether, out of which 1498 bottles were seized from the shed owned by the second accused. The second accused is no more. Accused Nos.6 to 9 are absconding.

3. The prosecution evidence consisted of the testimony of PWs.1 to 9, Exts.P1 to P7 and MOs.1 series to 4 series. The defence examined DWs.1 and 2 and got marked Exts.D1 to D4.

4. It is the contention of the counsel for the appellants that there is absolutely no evidence as to the identity of the first accused. He has been charge sheeted as a person who drove the lorry from Bangalore to a place in Malappuram District. It is further contended that accused Nos.3 to 5 have been implicated only as they happened to be the sons of the second accused. PW.1 the Assistant Sub Inspector who detected the offence on receipt of source information and reached the spot along with the police party had testified as to the detection and recovery. It is his version that on seeing the police party the vehicle was suddenly started and moved ahead and happened to hit on the compound wall, and the accused ran away, and although they chased them they could not be apprehended. But the sixth accused who was on the top of the lorry was apprehended. The liquor bottles seized from the lorry were found under the other articles loaded in the lorry. PW.1 has also deposed to the

sampling done that three bottles each were taken from the four items of the foreign liquor and Ext.P1 is the seizure mahazar allegedly prepared at the spot. PW.2 the Police Constable who was along with PW.1 has testified in support of the version of PW.1. He has also stated that the sixth accused, one of the absconding accused was arrested from the spot. PW.2 has also identified the material objects produced. PW.3 has not supported the prosecution version as such. According to him, he has signed in the mahazar at about 4 p.m at the police station and that too in the blank papers. PW.4 has stated that he has seen the police at the spot and has signed in Ext.P3 mahazar. He was not cross-examined. I find that the evidence of PWs.1 and 2 corroborate on material particulars and the version of PW.4 as to the preparation of Ext.P3 mahazar at the spot also stands unimpeached.

5. It is contended by the counsel for the appellants that there is no evidence as to the identity of the first accused and further that accused Nos.3 to 5 are not involved at all, and their identity has not been established. But I find that PW.1 in answer to the

court question has stated that the accused 3 to 5 are the sons of the second accused, and that the second accused and his sons ran away. It is also established from the evidence of PW.6, the Village Officer who has proved Ext.P5 certificate of the ownership of the house that the house belonged the the wife of the second accused, and hence the involvement of accused Nos.3 to 5 stand established as they have ran away from the spot as stated by PW.1. Of course there was no direct evidence as to the involvement of the first accused as nobody has identified him. As pointed out no trip sheet or other objective evidence that could have been produced to establish that it was he who have drove the vehicle has been produced.

6. It was also contended that there is delay of 24 days in producing the material objects before the court. It is seen that the material objects were produced before the court on 03/12/1997. PW.1 has stated that the articles were kept locked in the station and that he has handed over the key to PW.7 the Circle Inspector who has investigated the case. In the circumstances, I find that there is sufficient evidence as to the

safe keeping of the material objects in the police station and hence, the above belated production cannot be treated as a ground to suspect the prosecution version. Ext.P6 chemical analysis report do establish the fact that the samples examined contained 42 and odd% by volume of ethyl alcohol in all the samples. PW.7 the Investigating Officer has testified as to the arrest of the accused and the investigation conducted.

In the circumstances, and in the light of the evidence adduced in the matter, I find that so far as accused Nos.3 to 5 are concerned there is convincing evidence to establish their involvement. So far as the first accused is concerned, there is absolutely no evidence to his identity and hence, the first accused is liable to be acquitted. The conviction and sentence imposed on the first accused is set aside. As I find that the contraband seized is only foreign liquor and not illicit liquor, the sentence imposed on accused 3 and 4 is modified to imprisonment till the rising of the court and to pay a fine of rupees one lakh each and in default to undergo simple imprisonment for six months each. The sentence imposed on the

fifth accused is confirmed. Accused Nos.3 and 4 are granted two months time to remit the fine amount. They shall appear before the Sessions Judge on 17/12/2007 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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J U D G M E N T

17th **October**, 2007